

<sup>1</sup> K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

therefore, finds that the Order of [the] Administrative Law Judge granting claimant benefits in the form of temporary total disability compensation and medical treatment should be affirmed.

Following the Board's March 20, 2003 Order, the employer and its insurance carrier requested the Judge to terminate claimant's benefits. Following a motion hearing, Judge Avery denied that request in the July 9, 2003 Order, which stated, in pertinent part:

Motion to terminate benefits denied. The court finds that Dr. Geis's report contains no new evidence that has not been considered by the Court and the Board previously.

The employer and its insurance carrier contend Judge Avery erred. They challenge the Judge's finding that no new evidence was presented at the second hearing. Moreover, they continue to challenge that claimant's low back injury arose out of and in the course of employment with Wal-Mart. Accordingly, they request the Board to reverse the July 9, 2003 Order and to terminate claimant's benefits.

Conversely, claimant requests the Board to affirm the July 9, 2003 Order.

The only issue before the Board on this appeal is whether claimant's low back injury arose out of and in the course of employment with Wal-Mart.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and after considering the parties' arguments, the Board finds and concludes the July 9, 2003 Order should be affirmed.

At the July 8, 2003 hearing, the employer and its insurance carrier presented the medical report prepared by Dr. Dick Geis, who examined claimant on April 23, 2003, at the request of the employer and its insurance carrier's attorney. In that report, Dr. Geis provides his opinion that there is insufficient evidence that claimant's current symptoms are causally related to lifting a case of pop as alleged. As indicated by his written report, the doctor made that conclusion based upon the histories recorded in emergency room records that were generated due to claimant's July 14, 2002 visit to Stormont-Vail Emergency Department.

The emergency room records (and the questions raised by those records) were considered by the Board when it entered its March 20, 2003 Order, which found this claim compensable. The Board finds no reason to disturb its earlier findings and conclusions. Accordingly, the Board concludes that claimant's low back injury arose out of and in the course of her employment with Wal-Mart.

**WHEREFORE**, the Board affirms the July 9, 2003 Order entered by Judge Avery.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 2003.

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BOARD MEMBER

c: Timothy J. Pringle, Attorney for Claimant  
James B. Biggs, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director